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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DOCKET NO. 72-6299

UNITED STATES OF AMERICA,

Appellee,

vs.

JOHN A. GREELEY,

Appellant.

CRIMINAL ACTION—ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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FEDERAL STATUTE:

18 U.S.C. Sec. 659	1, 3

RULE CITED:

Rule 39	4

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

The appellant, John A. Greeley, herein prays to the Justices of the Supreme Court of the United States for the granting of the petition for a writ of *certiorari* from a judgment entered in the United States Court of Appeals for the Third Circuit under Docket No. 72-1376, said judgment being rendered on December 14, 1972, The Honorable Judges Kalodner, Adams and Rosenn sitting, Circuit Judges.

OPINION BELOW

An opinion was rendered by the Third Circuit Court of Appeals on December 14, 1972, said judgment being filed December 14, 1972, denying the appeal of the appellant, John A. Greeley, a copy of said opinion being attached hereto to this petition.

JURISDICTION

The jurisdiction of the United States Supreme Court is based upon the indictment and conviction of the appellant under 18 U.S.C. Sec. 659, to wit: possession of stolen goods, moving in interstate commerce, knowing them to have been stolen, and the violation of this appellant's constitutional rights under the 4th, 5th, 6th and 14th amendments to the United States Constitution, that being a deprivation of due process according to law, said deprivation of due process leading to a conviction of this appellant contrary to fundamental constitutional principles.

The date of the judgment and entry of this judgment sought to be reviewed is December 14, 1972.

The statutory provision which confers jurisdiction on this court to review the judgment in question is set forth above, 18 U.S.C. Section 659, and the constitutional provisions enunciated above.

QUESTIONS PRESENTED

The particular questions presented for review in this petition are as follows:

1. Whether it was error for the trial court over the objection of appellant's attorney to have permitted the U.S. Attorney to cross-examine the appellant, John A. Greeley, concerning a 1959 prior conviction at a time when the appellant took the stand upon his own behalf in an effort to rebut the rule of law that possession of recently stolen property warrants an inference of guilty knowledge unless satisfactory explanation of possession is made consistent with innocence, *United States v. Anost*, 356 F. 2d 413 (7 Cir. 1966), and whether said error violated the Fifth and Sixth Amendments to the United States Constitution, *United States v. Bailey*, 426 F. 2d 1236 (D.C. 1970).

2. Whether the trial court erred in admitting a photocopy of a time record of an employee of a company where the employee did not testify, and further where there was no satisfactory explanation made as to why the original was not produced.

3. Whether the admission of the time record, G-1 in evidence, violated the appellant, John Greeley's Sixth Amendment guarantee of confrontation of witnesses. *United States v. Lipscomb*, 435 F. 2d 795 (5 Cir. 1971).

4. Whether it was error for the trial court to have charged the jury that possession of recently stolen property permits the jury to infer guilty knowledge unless satisfactory explanation is made consistent with innocence, where the only method by which the appellant, John A. Greeley, could rebut said inference is to take the stand, knowing he could be cross-examined by the U.S. Attorney on his prior 1959 robbery conviction, and whether that error violated this appellant's guarantee under the Fifth and Sixth Amendments to the United States Constitution.

REASONS FOR GRANTING WRIT

The appellant, John A. Greeley, and Ronald F. Greeley, were arrested on November 3, 1969, at the Green Hills Shopping Center, Parsippany, New Jersey, and charged with violation of 18 U.S.C. Sec. 659, to wit: that they knowingly had in their possession stolen goods having a value in excess of $100.00, which goods were stolen while moving as part of a shipment in interstate commerce.

Under 18 U.S.C. Sec. 659, a jury may infer guilty knowledge of the defendant where it is proven that he was in possession of the recently stolen goods, and such was the charge of the trial court. As a result thereof, the appellant, John A. Greeley, was compelled to take the stand in an effort to rebut this disastrous inference. Yet, after he was questioned on direct examination, the U.S. Attorney was permitted, over counsel's objection, to cross-examine the appellant on his prior 1959 robbery conviction.

It is contended that this situation effectively deprived the appellant of due process of law. If the prosecutor is to rely on the inference of guilty knowledge, he should not be able to cross-examine the appellant on his prior convictions.

By analogy, a similar situation occurred where a prosecutor was permitted to comment to the jury on defendant's failure to take the stand, now repudiated by this court. *Griffin v. State of California*, 380 U.S. 609, 85 S. Ct. 1229, 14 L.Ed. 2d 106 (1965).

The basis for Federal jurisdiction of the court in the first instance was a prosecution under 18 U.S.C. Section 659.

It is prayed that this Court prohibit the procedure utilized in this case where a defendant is compelled to testify on his own behalf by reason of the inference stated above.

A copy of the opinion of the Third Circuit Court of Appeals is attached hereto dated December 14, 1972.

The Honorable Court is advised that this petition for *certiorari* is being brought by the petitioner in *forma pauperis*.

The petition for writ of *certiorari* has been presented in conformity with *Rule* 39.

Dated: January 10, 1973.

Respectfully submitted,

/s/ Robert A. Abrams
ROBERT A. ABRAMS
Attorney for Appellant,
John A. Greeley

ADDENDUM "A"

IN THE

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NOS. 72-1376 AND 72-1377

UNITED STATES OF AMERICA

vs.

JOHN A. GREELEY

RONALD F. GREELEY

JOHN A. GREELEY,
Appellant in No. 72-1376

RONALD F. GREELEY,
Appellant in No. 72-1377

(D. C. CRIMINAL NO. 351-70)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARGUED OCTOBER 30, 1972
BEFORE KALODNER, ADAMS AND ROSENN,
Circuit Judges

Opinion of the Court
(Filed December 14, 1972)

PER CURIAM:

These appeals are from judgments of conviction entered by the District Court pursuant to jury verdicts find-

ing the defendant-appellants guilty of possession of stolen goods, moving in interstate commerce, knowing them to have been stolen, in violation of 18 U.S.C.A. § 659.

On these appeals the appellants contend that the jury's verdicts were against the weight of the evidence and that acquittals should be directed. They also challenge as prejudicial error several of the trial judge's rulings on the admission of evidence and his instructions to the jury.

On review of the record we are of the opinion that the evidence adduced at the trial amply supported the jury's guilty verdicts and that the appellants' challenges to the trial judge's evidentiary rulings [1] and charge fail to demonstrate prejudicial error.

We do not subscribe to the contention of the appellant John Greeley that the trial judge abused his discretion in permitting the Government to cross-examine him, for impeachment purposes, with respect to his June 16, 1960 robbery conviction which resulted in his imprisonment until 1965. The contention is premised on two grounds: (1) remoteness of the conviction; and (2) its alleged prejudicial effect.

We need only say as to this contention, that we recently re-affirmed the rule in this Circuit that subject to certain limitations, inapplicable here, a felony conviction may be adduced to impeach the credibility of a witness. *United States v. Gray*, — F.2d —, No. 71-1430 (decided October 3, 1972). Further, we have specifically held that a trial judge did not abuse his discretion in admitting, for impeachment purposes, evidence of a 10-year-old

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1. The defendant-appellant Ronald Greeley's challenge to the trial judge's denial of his request for inspection of certain F.B.I. interview reports is without basis. The reports do not contain Jencks Act (18 U.S.C.A. § 3500), or exculpatory (*Brady v. Maryland*, 373 U.S. 83 [1963]), material.

felony conviction of a witness. *Wounick v. Hysmith*, 423 F.2d 873 (1970).[2]

For the reasons stated the judgments of conviction will be affirmed.

A True Copy :

Teste :

Clerk of the United States Court of Appeals for the Third Circuit.

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2. The Rules of Evidence for United States Courts and Magistrates, promulgated by the Supreme Court of the United States on November 20, 1972, to take effect on July 1, 1973, provide as follows:

"Rule 609. *Impeachment by Evidence of Conviction of Crime*

"(a) *General rule.*—For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime is admissible but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted or (2) involved dishonesty or false statement regardless of the punishment.

"(b) *Time limit.*—Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the release of the witness from confinement imposed for his most recent conviction, or the expiration of the period of his parole, probation, or sentence granted or imposed with respect to his most recent conviction, which ever is the later date.

". . . ." 41 U.S.L.W. 4021, 4028.